

## **65-655**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-655. Food, drug and cosmetic act; title.** This act may be cited as the Kansas food, drug and cosmetic act.

**History:** L. 1953, ch. 286, § 1; June 30.

## **65-656**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-656. Same; definitions.** For the purpose of this act: (a) The term "secretary" means the secretary of health and environment.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts or accessories. The term "drug" shall not include amygdalin (laetrile).

(e) The term "device," except when used in paragraph (k) of this section and in K.S.A. 65-657 (j), 65-665 (f), 65-669 (c) and (o), and 65-671 (c) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleaning, beautifying, promoting attractiveness, or altering the appearance; and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(g) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combinations thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or materials with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions. The term "new drug" shall not include amygdalin (laetrile).

(o) The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this act regarding the selling of food, drug, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such articles for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the agricultural chemicals act, K.S.A. 2-2202 as now enacted or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(r) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(s) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include: (1) A pesticide chemical in or on a raw agricultural commodity; or (2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the food additive amendment of 1958, pursuant to the federal act.

(t) (1) The term "color additive" means a material which -- (A) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or (B) when added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with another substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act. (2) The term "color" includes black, white and intermediate grays. (3) Nothing in clause (1) (t) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(u) The term "imitation" shall mean any article made in the semblance of another, consisting of similar or dissimilar ingredients and being capable of being substituted for the imitated article without the knowledge of the consumer.

(v) The term "federal act" means the federal food, drug and cosmetic act (title 21 U.S.C. 301 *et seq.*; 52 Stat. 1040 *et seq.*).

**History:** L. 1953, ch. 286, § 2; L. 1965, ch. 377, § 1; L. 1967, ch. 338, § 1; L. 1974, ch. 352, § 97; L. 1978, ch. 239, § 13; July 1.

## 65-657

### Chapter 65.--PUBLIC HEALTH

#### Article 6.--FOOD, DRUGS AND COSMETICS

**65-657. Same; unlawful acts.** The following acts and the causing thereof within the state of Kansas are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of K.S.A. 65-666.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by K.S.A. 65-674.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of K.S.A. 65-660.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized, or required by regulations promulgated under the provisions of this act.

(k) The using of any person to his own advantage, or revealing, other than to the administrator or officers or employees of the department of health and environment or to the courts where relevant in any jurisdictional proceeding under this act, any information acquired under authority of this act concerning any method or process which, as a trade secret is entitled to protection.

(l) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under K.S.A. 65-669a, as amended, or that such drug complies with the provisions of such section.

(m) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

(n) (1) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or (2) selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (1) hereof; or (3) making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

(o) Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

**History:** L. 1953, ch. 286, § 3; L. 1965, ch. 377, § 2; L. 1974, ch. 352, § 98; July 1.

## **65-658**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-658. Same; injunction to restrain violation of 65-657.** In addition to the remedies hereinafter provided the secretary of health and environment is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining, any person from violating any provision of K.S.A. 65-657, as amended; irrespective of whether or not there exists an adequate remedy at law.

**History:** L. 1953, ch. 286, § 4; L. 1974, ch. 352, § 99; July 1.

## **65-659**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-659. Same; penalties for violations of 65-657.** (a) Any person who violates any of the provisions of K.S.A. 65-657, as amended, shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than sixty (60) days or a fine of not more than three hundred dollars (\$300), or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than six (6) months, or a fine of not more than one thousand dollars (\$1,000), or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) or (c) if he establishes a guaranty of undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this act, designating this act.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller or the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the secretary to furnish the secretary the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement.

**History:** L. 1953, ch. 286, § 5; L. 1974, ch. 352, § 100; July 1.

## **65-660**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-660. Same; adulterated or misbranded food, drug, device or cosmetic; detaining or embargoing; condemnation proceedings; consolidation, when; samples and analyses of seized articles; destruction of certain perishable food.** (a) Whenever a duly authorized agent of the secretary finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: *Provided*, That when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees,

and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the secretary. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the secretary that the article is no longer in violation of this act, and that the expenses of such supervision have been paid: *Provided further*, That no action shall be instituted under this act for any alleged misbranding if there is pending in any court, state or federal, a proceeding under this act based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (1) when such misbranding has been the basis of a prior judgment in favor of the state of Kansas or the United States, in a criminal, injunction, or condemnation proceeding under this act, or (2) when the administrator has probable cause to believe from facts found without hearing by him or any officer or employee of the agency that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of proceedings is limited as above provided, the proceeding pending or instituted shall, on application of the claimant seasonably made, be removed for trial to any district court agreed upon by stipulation between the parties, or in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court after giving the county attorney reasonable notice and opportunity to be heard shall by order, unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, to which the case shall be removed for trial. Upon demand of either party any issue of fact joined in any such case shall be tried by jury: *Provided further*, When proceedings under this section involving the same claimant and the same issues of adulteration or misbranding are pending in two or more jurisdictions, such pending proceedings upon application of the claimant seasonably made to the court of one jurisdiction, shall be consolidated for trial by order of such court and tried in (1) any district selected by the claimant where one such proceeding is pending, or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time the claimant may apply to the court of one such jurisdiction and such court, after giving reasonable notice to the county attorney and opportunity to be heard, shall by order unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, in which all such pending proceedings shall be consolidated for trial and tried. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the case covered thereby: *Provided further*, The court at any time after seizure up to a reasonable time before trial, shall by order allow any party to a condemnation proceeding, his attorney or agent to obtain a representative sample of the article seized and as regards fresh fruits or fresh vegetables, a true copy of the analyses on which the proceeding is based and the identifying marks or numbers, if any of the packages from which the samples analyzed were obtained.

(d) Whenever the secretary or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the secretary, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

**History:** L. 1953, ch. 286, § 6; L. 1974, ch. 352, § 101; July 1.

## **65-661**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-661. Same; proceedings instituted by county attorney.** It shall be the duty of each county attorney to whom the secretary reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

**History:** L. 1953, ch. 286, § 7; L. 1974, ch. 352, § 102; July 1.

## **65-662**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-662. Same; minor violations; notice or warning.** Nothing in this act shall be construed as requiring the secretary to report for the institution of proceedings under this act, minor violations of this act, whenever the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

**History:** L. 1953, ch. 286, § 8; L. 1974, ch. 352, § 103; July 1.

## **65-663**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-663. Same; regulations prescribing definitions and standards of identity for food.** Whenever in the judgment of the secretary such action will promote honesty and fair dealing in the interest of consumers, the secretary shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the secretary shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

**History:** L. 1953, ch. 286, § 9; L. 1974, ch. 352, § 104; July 1.

## **65-664**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-664. Same; food deemed adulterated, when.** A food shall be deemed to be adulterated:

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of the substance in such food does not ordinarily render it injurious to health; or (2)(A) it bears or contains any added poisonous or added deleterious substance, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which is unsafe within the meaning of K.S.A. 65-667; or (B) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of K.S.A. 65-667; or (C) it is or it bears or contains any food additive which is unsafe within the meaning of K.S.A. 65-667. Where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under K.S.A. 65-667 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of K.S.A. 65-667 and clause (C) of this subsection, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or (3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or is otherwise unfit for food; or (4) it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or (5) it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) any substance has been substituted wholly or in part therefor; or (3) damage or inferiority has been concealed in any manner; or (4) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value

than it is. This subsection does not apply to any cured or smoked pork product by reason of its containing added water.

(c) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum, and pectin. This subsection does not apply to any confectionery by reason of its containing less than 1/2 of 1% by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it is or bears or contains any color additive which is unsafe within the meaning of K.S.A. 65-667.

**History:** L. 1953, ch. 286, § 10; L. 1965, ch. 377, § 3; L. 1981, ch. 242, § 1; July 1.

## 65-665

### Chapter 65.--PUBLIC HEALTH

#### Article 6.--FOOD, DRUGS AND COSMETICS

**65-665. Same; food deemed misbranded, when.** A food shall be deemed to be misbranded:

- (a) If its labeling is false or misleading in any particular.
- (b) If it is offered for sale under the name of another food.
- (c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.
- (d) If its container is so made, formed, or filled as to be misleading.
- (e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary of health and environment.
- (f) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by K.S.A. 65-663, as amended, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.
- (h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided in K.S.A. 65-663, as amended, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container has been prescribed by regulations as provided by K.S.A. 65-663, as amended, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify a statement that it falls below such standard.
- (i) If it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each: *Provided*, That to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the secretary.
- (j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary determines to be, and by regulations prescribes, as necessary, in order to fully inform purchasers as to its value for such uses.
- (k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the secretary.

(l) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

**History:** L. 1953, ch. 286, § 11; L. 1974, ch. 352, § 105; July 1.

## **65-666**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-666. Permits for certain classes of food; regulations governing conditions of issuance; suspension and reinstatement, when; access of facilities for inspection.** (a) Whenever the secretary finds after investigation that the distribution in Kansas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health. After the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the secretary as provided by such regulations.

(b) The secretary is authorized to use emergency adjudicative proceedings to suspend any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the secretary shall, immediately after prompt hearing in accordance with the provisions of the Kansas administrative procedure act and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the secretary shall have access to any factory or establishment, the operator of which holds a permit from the secretary for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

**History:** L. 1953, ch. 286, § 12; L. 1974, ch. 352, § 106; L. 1988, ch. 356, § 186; July 1, 1989.

## **65-667**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-667. Same; limiting quantities of certain substances added to foods; regulations governing.** (a) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall, with respect to any particular use or intended use be deemed unsafe for the purpose of application of clause (2) (A) of K.S.A. 65-664 (a) with respect to any food, K.S.A. 65-668 (a) with respect to any drug or device, or K.S.A. 65-670 (a) with respect to any cosmetic, unless there is in effect a regulation pursuant to subsection (b) of this section limiting the quantity of such substance, and the use or intended use of such substance, conform to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulation, be considered adulterated within the meaning of clause (1), of subsection (a) of K.S.A. 65-664, subsection (a) of K.S.A. 65-668 or subsection (a) of K.S.A. 65-670.

(b) The secretary, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the federal act prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including, but not limited to, zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive



may be safely used and exemptions where such food additive or color additive is to be solely for investigational or experimental purposes, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, and it shall be incumbent upon such petitioner to establish by data submitted to the secretary that a necessity exists for such regulation, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the secretary to determine whether such regulations should be promulgated, the secretary may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request. In adopting, amending or repealing regulations relating to such substances, the secretary shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

(1) The name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect.

(2) The probable composition of, or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance.

(3) The probable consumption of such substance in the diet of man and animals taking into account many chemically or pharmacologically related substance in such diet.

(4) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data.

(5) The availability of any needed practicable methods of analysis for determining the identity and quantity of (i) such substance in or on an article, (ii) any substance formed in or on such article because of the use of such substance, and (iii) the pure substance and all intermediates and impurities.

(6) Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

(c) In adopting regulations under subsection (b) of this section, the secretary is authorized to adopt by reference those lists pertaining to or reflecting the same judgments which have been promulgated as regulations under the federal act and have been published in the federal register, if the regulations adopted by reference are in effect on the date adopted, and regulations so adopted shall remain the regulations of the secretary until changed by the secretary. In so doing, the secretary additionally may add to or delete from such lists, whenever in his judgment the statutory guidelines of this section so require.

**History:** L. 1953, ch. 286, § 13; L. 1965, ch. 377, § 4; L. 1974, ch. 352, § 107; July 1.

## 65-672

### Chapter 65.--PUBLIC HEALTH

#### Article 6.--FOOD, DRUGS AND COSMETICS

**65-672. Same; advertisements of food, drugs, devices or cosmetics deemed false, when.** (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to a physician, dentist or veterinarian, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: *Provided*, That whenever the secretary determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the secretary shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such condition and restriction as the secretary may deem necessary in the interests of public health: *Provided*, That this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

**History:** L. 1953, ch. 286, § 18; L. 1974, ch. 352, § 111; July 1.

## **65-673**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-673. Rules and regulations; authority of secretary; hearings.** (a) The authority to promulgate rules and regulations for the efficient enforcement of this act is hereby vested in the secretary. The secretary is hereby authorized to make the regulations promulgated under this act conform, insofar as practicable, with those promulgated under the federal act.

(b) Hearings authorized or required by this act shall be conducted by the secretary or by a hearing officer designated by the secretary for this purpose. The secretary shall prescribe by rule and regulation the procedure for conducting hearings. The hearing officer shall have the same powers in conducting a hearing as the secretary. In conducting a hearing the secretary or the hearing officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the hearing officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter which the person may be lawfully questioned, the district court of any county on application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof. Notwithstanding the foregoing provisions of this subsection, hearings on an order, as defined in subsection (d) of K.S.A. 77-502 and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Before promulgating any rules and regulations contemplated by K.S.A. 65-663, 65-665, 65-666, 65-669, or 65-672, and amendments thereto, the secretary shall give appropriate notice of the proposal and of the time and place for a hearing as provided in this act. Such rules and regulations may be amended or revoked in the same manner as is provided by law for adoption.

**History:** L. 1953, ch. 286, § 19; L. 1965, ch. 506, § 27; L. 1974, ch. 352, § 112; L. 1982, ch. 258, § 5; L. 1988, ch. 356, § 188; July 1, 1989.

## **65-674**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-674. Same; free access to establishments and vehicles for inspections and samples.** The secretary or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose: (1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this act are being violated, and (2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the secretary to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this act is being violated.

**History:** L. 1953, ch. 286, § 20; L. 1974, ch. 352, § 113; July 1.

## **65-675**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-675. Same; reports and dissemination of information.** (a) The secretary may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(b) The secretary may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the secretary deems necessary in the interest of public health and the protection of the

consumer against fraud. Nothing in the section shall be construed to prohibit the secretary from collecting, reporting and illustrating the results of the investigations of the secretary.

**History:** L. 1953, ch. 286, § 21; L. 1974, ch. 352, § 114; July 1.

## **65-676**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-676. Same; enforcement of act.** The enforcement of the provisions of this act and all acts ancillary hereto shall be the duty of the division of health of the department of health and environment. The secretary is hereby authorized to appoint the necessary personnel to properly administer this act.

**History:** L. 1953, ch. 286, § 22; L. 1974, ch. 352, § 115; July 1.

## **65-677**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-677. Same; examinations by office of laboratory services and at state educational institutions; expenses.** The examinations of foods, drugs, devices and cosmetics required for the proper enforcement of this act may be made by the office of laboratory services or by specialists and experts in the various fields of science at the state educational institutions, and the secretary shall pay the actual and necessary expenses of such specialists and experts.

**History:** L. 1953, ch. 286, § 23; L. 1974, ch. 352, § 116; L. 1975, ch. 312, § 9; July 1

## **65-678**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-678. Same; cooperation with federal food and drug administration.** The secretary is hereby authorized to confer and cooperate with the federal food and drug administration in the enforcement of the national food, drug and cosmetic act as it may apply to food, liquor, drugs, and cosmetic products received in this state from other states, territories or foreign countries.

**History:** L. 1953, ch. 286, § 24; L. 1974, ch. 352, § 117; July 1.

## **65-679**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-679. Same; act not to limit authority established under certain other acts.** Nothing in this act shall be construed as limiting or abridging the authority of the secretary of agriculture established under the Kansas dairy law, K.S.A. 65-771 through 65-791, and amendments thereto; or the Kansas commercial feeding stuffs law, K.S.A. 2-1001 through 2-1013, and amendments thereto.

**History:** L. 1953, ch. 286, § 25; L. 1974, ch. 352, § 118; L. 2001, ch. 32, § 23; L. 2002, ch. 25, § 1; July 1.

## **65-680**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-680. Same; invalidity of part.** If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and applicability thereof to other persons and circumstances shall not be affected thereby.

**History:** L. 1953, ch. 286, § 26; June 30.

## **65-681**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-681. Unlawful labeling of a product as honey or imitation honey; "person" defined.** It shall be unlawful for any person to package any product and label the product as "honey" or "imitation honey" or to use the word honey in any prominent location on the label of such product or to sell or offer for sale any product which is labeled "honey" or "imitation honey" or which contains a label with the word "honey" prominently displayed thereon, unless such product is pure honey manufactured by honeybees.

As used in this act "person" shall mean and include individuals, corporations, associations, receivers, and trustees.

**History:** L. 1974, ch. 1, § 1; July 1.

## **65-682**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-682. Same; penalty.** Any person violating or failing to comply with any of the provisions of this act shall be deemed guilty of a class C misdemeanor.

**History:** L. 1974, ch. 1, § 2; July 1.

## **65-683**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-683. Same; administration and enforcement.** The secretary of health and environment shall be charged with the administration and enforcement of the provisions of this act.

**History:** L. 1974, ch. 1, § 3; L. 1975, ch. 462, § 73; July 1.

## **65-684**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-684. Same; injunction.** In addition to the penalties provided in K.S.A. 65-682 the secretary of health and environment is hereby authorized to apply to the district court for, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of K.S.A. 65-681.

**History:** L. 1974, ch. 1, § 4; L. 1975, ch. 462, § 74; July 1.

## **65-685**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-685. Same; duty of county or district attorney.** It shall be the duty of each county or district attorney to whom the secretary of health and environment reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

**History:** L. 1974, ch. 1, § 5; L. 1975, ch. 462, § 75; July 1.

## **65-686**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-686. Same; minor violations of act; notice.** Nothing in this act shall be construed as requiring the secretary of health and environment to report for the institution of proceedings under this act, minor

violations of this act, whenever the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

**History:** L. 1974, ch. 1, § 6; L. 1975, ch. 462, § 76; July 1.

## **65-687**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-687. Limitation on liability of donor for donated food.** (a) As used in this act, the following terms shall mean:

(1) "Canned food," any food commercially processed and prepared for human consumption.

(2) "Perishable food," any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables and foods which have been packaged, refrigerated or frozen.

(b) All other provisions of law notwithstanding, a good faith donor of canned or perishable food, to a bona fide charitable or not for profit organization for ultimate distribution to needy individuals, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the willful, wanton, malicious or intentional misconduct of the donor.

(c) All other provisions of law notwithstanding, a bona fide charitable or not for profit organization which in good faith receives and distributes food, which complies with K.S.A. 65-655 *et seq.*, and amendments thereto, at the time it was donated and which is fit for human consumption at the time it is distributed, without charge, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the willful, wanton, malicious or intentional misconduct of such organization.

(d) The provisions of this act shall govern all good faith donations of canned or perishable food which is not readily marketable due to appearance, freshness, grade, surplus or other conditions, but nothing in this act shall restrict the authority of any appropriate agency to regulate or ban the use of such food for human consumption.

**History:** L. 1983, ch. 202, § 1; L. 1996, ch. 101, § 1; July 1.

## **65-688**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-688. Retail food stores and food processing plants; inspection fees; rules and regulations.** [See Revisor's Note] (a) As used in this section and K.S.A. 65-689, and amendments thereto:

(1) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines.

(2) "Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. "Food processing plant" shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail.

(3) "Food" means a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.

(4) "Secretary" means the secretary of agriculture.

(b) In order to reimburse the state of Kansas for inspections by the secretary of agriculture of retail food stores and food processing plants, the secretary of agriculture shall adopt rules and regulations establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location. Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are

collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for retail food stores or food processing plants by amending the rules and regulations which fix the fees, as the case may be.

(c) All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund.

(d) The secretary of agriculture shall adopt rules and regulations necessary to carry out the provisions of this section.

**History:** L. 2001, ch. 203, § 2; L. 2002, ch. 91, § 16; L. 2004, ch. 147, § 6; July 1.

## **65-688a**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

##### **65-688a. Retail food stores and food processing plants; inspection fees; rules and regulations.**

**[See Revisor's Note]** (a) As used in this section and K.S.A. 65-689, and amendments thereto:

(1) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines, or any plant which is registered by the Kansas department of agriculture under article 7 of chapter 65 of the Kansas Statutes Annotated or which is licensed by the Kansas department of agriculture under article 6a of chapter 65 of the Kansas Statutes Annotated.

(2) "Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. "Food processing plant" shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail, or any plant which is registered by the Kansas department of agriculture under article 7 of chapter 65 of the Kansas Statutes Annotated or which is licensed by the Kansas department of agriculture under article 6a of chapter 65 of the Kansas Statutes Annotated.

(3) "Secretary" means the secretary of health and environment.

(b) In order to reimburse the state of Kansas for inspections by the secretary of health and environment of retail food stores and food processing plants, the secretary of health and environment shall adopt rules and regulations establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location. Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for retail food stores or food processing plants by amending the rules and regulations which fix the fees, as the case may be.

(c) All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food inspection fee fund.

(d) The secretary of health and environment shall adopt rules and regulations necessary to carry out the provisions of this section.

**History:** L. 2001, ch. 203, § 2; L. 2002, ch. 91, § 16; L. 2004, ch. 101, § 170; July 1.

## **65-689**

### **Chapter 65.--PUBLIC HEALTH**

#### **Article 6.--FOOD, DRUGS AND COSMETICS**

**65-689. Same; license requirements, fees, inspections, denial, hearing, display.** (a) It shall be unlawful for any person to engage in the business of conducting a retail food store or food processing plant unless such person shall have in effect a valid license therefor issued by the secretary. For the purpose of this section, the sale of food in the same location less than seven days in any calendar year shall be construed as the occasional sale of food. Nothing in this act shall prevent the secretary from inspecting any retail food store or food processing plant when a complaint against such retail food store or food processing plant is transmitted to the secretary or any authorized agent thereof.

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee. Application fees may be adjusted in accordance with the type of retail food store or food processing plant or based on other criteria as determined by the secretary. Such license fee shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the retail food store and food processing plant inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the retail food store or food processing plant designated in the application, to determine that it complies with rules and regulations adopted pursuant to subsection (d) of section 3 [65-688], and amendments thereto. If the retail food store or food processing plant is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(c) Every license issued hereunder shall be displayed conspicuously in the retail food store or food processing plant for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$3.

**History:** L. 2001, ch. 203, § 3; July 1.